

# **EXHIBIT A**

UNITED STATES DISTRICT COURT BY \_\_\_\_\_ D.C.  
SOUTHERN DISTRICT OF FLORIDA  
SOUTHERN DIVISION 97 AUG 13 PM 3:24

CARLOS JENKE  
CLERK U.S. DIST. CT.  
S.D. OF FLA.-MIAMI

UNITED STATES OF AMERICA )

Ex Rel )

VEN-A-CARE OF THE )

FLORIDA KEYS, INC. )

a Florida Corporation, )

by and through its principal )

officers and directors, )

ZACHARY T. BENTLEY and )

T. MARK JONES, )

Plaintiff, )

v. )

ABBOTT LABORATORIES; )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

[REDACTED] )

CIVIL ACTION NO.95-1354-CIV-MARCUS

FILED IN CAMERA AND UNDER SEAL

SECOND AMENDED COMPLAINT

For Money Damages and Civil

Penalties Under the False Claims Act

31 U.S.C. §§3729-3732

**CIVIL ACTION NO. 95-1354-CIV-MARCUS**

**Defendants.**

**SECOND AMENDED COMPLAINT**  
**FOR MONEY DAMAGES AND CIVIL PENALTIES UNDER THE FALSE**  
**CLAIMS ACT 31 U.S.C. §§3729-3732**

COMES NOW, the UNITED STATES OF AMERICA ("UNITED STATES" or "GOVERNMENT"), by and through VEN-A-CARE OF THE FLORIDA KEYS, INC. ("VEN-A-CARE" or "the Relator"), and its principal officers and directors, ZACHARY T. BENTLEY, and T. MARK JONES, and by the undersigned attorneys on behalf of the UNITED STATES and on the Relator's own behalf and bring this action against ABBOTT LABORATORIES;

[REDACTED]

**CIVIL ACTION NO. 95-1354-CIV-MARCUS**

products. When patents expire and other manufacturers bring "generic" versions of the formerly patented drug to the market, prices ordinarily fall due to competition and due to the fact that the generic manufacturers did not expend the large sums of money on research and development as did the original brand manufacturers. Prices also fall when manufacturers compete against alternative therapies or when they reduce prices so that third party payers will cover their drug for payment. Due to the Relator's position in the industry, the Relator has been made privy to the truthful cost and price information that has been concealed from the Medicare and States' Medicaid Programs and has directly witnessed the methods employed by each of the DEFENDANT PHARMACEUTICAL MANUFACTURERS in carrying out the false and fraudulent claims schemes set out herein. The Relator has further witnessed the Medicare and States' Medicaid Programs incurring damages because the DEFENDANT PHARMACEUTICAL MANUFACTURERS concealed price reductions and instead created the illusion that the specified pharmaceuticals continued to be sold at the price levels commanded by brand manufacturers before the price reductions occurred resulting from competition.

48. The false claim scheme at issue occurs to date as evidenced by pricing representations made for the generic injectable drug "Acyclovir." The Brand name for Acyclovir is Zovirax manufactured by [REDACTED]. [REDACTED] reported 1996 sales of \$529,300,000.00 for Zovirax. On April 22, 1997 [REDACTED] Zovirax patent expired. Acyclovir is a anti-viral drug that is widely prescribed to persons who are suffering with the HIV disease. Prior to the patent expiration, VAC's wholesale cost for 1 gm of

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Zovirax was \$103.67 and its AWP was \$113.20 (a difference of 9%). Defendant ABBOTT was one of the first companies to announce distribution of a generic injectable Acyclovir. On or about February 19, 1997, Defendant ABBOTT set a true pre distribution price of \$70.00 for 1 gm (**Exhibit "1"**) which was approximately 30% less than [REDACTED] brand Zovirax. However ABBOTT fraudulently and falsely reported to Medical Economics (**Exhibit "2"**) and First Data Bank a Direct Price of \$160.00 for 1 gm which caused Medical Economics and First Data Bank to set a false and fraudulent AWP of \$190.00 for 1 gm or approximately 70% more than the Brand. Before ABBOTT could begin distribution of its generic injectable Acyclovir, another drug manufacturer announced distribution of a competing generic injectable Acyclovir at an initial price less than ABBOTT's. On or about April 28, 1997, ABBOTT reacted to the market conditions of price competition by lowering its true price to providers from \$70.00 to \$60.00 for 1 gm (**Exhibit "3"**). Despite ABBOTT's reduction in prices to providers, ABBOTT continued to publish its original grossly inflated false and fraudulent representations of cost and price (**Exhibit "4"**). During a telephone conversation between VAC's Bentley and an ABBOTT marketing/sales representative, on or about May 30, 1997, Bentley was informed that ABBOTT was committed to capturing market share by "widening the spread for providers" by lowering the true price while inflating the price represented to Medicare and Medicaid. The following charts contain the specific allegations demonstrating the Acyclovir fraud:

## CIVIL ACTION NO. 95-1354-CIV-MARCUS

| BRAND      |                   |            |                 |                    |                     |
|------------|-------------------|------------|-----------------|--------------------|---------------------|
| COMPANY    | DRUG              | NDC        | RED BOOK<br>AWP | VEN-A-CARE<br>COST | FLORIDA<br>MEDICAID |
| [REDACTED] | Zovirax<br>500 mg | [REDACTED] | \$ 56.60        | \$ 47.20           | \$ 50.47083         |
| [REDACTED] | Zovirax<br>1 gm   | [REDACTED] | \$113.20        | \$103.67           | \$100.94059         |

## VERSUS

| GENERIC |   |               |                        |          |                               |                     |
|---------|---|---------------|------------------------|----------|-------------------------------|---------------------|
| COMPANY | DRUG                                      | NDC           | RED BOOK<br>"AWP" "DP" |          | VEN-A-CARE<br>COST            | FLORIDA<br>MEDICAID |
| Abbott  | Acyclovir<br>Sodium<br>500 mg             | 00074-4427-01 | \$95.00                | \$80.00  | <del>\$35.00</del><br>\$30.00 | \$ 84.5500          |
| Abbott  | Acyclovir<br>Sodium<br>1,000 mg<br>(1 gm) | 00074-4452-01 | \$190.00               | \$160.00 | <del>\$70.00</del><br>\$60.00 | \$169.1000          |

**4(D) AN EFFECT OF FALSE PRICING SCHEME AND RESULTING ILLEGAL  
SPLIT FEE ARRANGEMENTS IS TO DRIVE LAW ABIDING  
COMPETITORS OUT OF BUSINESS**

49. The actions of the DEFENDANT PHARMACEUTICAL MANUFACTURERS alleged herein result in grossly excessive amounts being paid to their customers by the Medicare and States' Medicaid Programs for claims submitted for the specified pharmaceuticals. Accordingly, the exorbitant payments induce physicians, clinics and

ABBOTT

Alternate Site  
Product Sales

High Tech Products for Alternate Site and Home Health Care

Mr. Michael Fabrizio  
Division Vice President  
Automated Health Technologies  
1025 NW 17th Avenue  
Delray Beach, FL 33445

February 14, 1997

Dear Michael,

Abbott Laboratories is pleased to announce that we will be adding two new product lines to our family of FirstChoice® Injectable Drugs.

Early in the 2nd quarter of 1997 we will offer Acyclovir and Cefuroxime Sodium available as high quality, cost-cutting generics. Acyclovir will be available in two strengths, 500 mg and 1 gram vials (as is Glaxo's Zovirax). Cefuroxime Sodium will be available in five strengths, as is Glaxo's Zinacef, Lilly's Kefurox or Marsam's generic version.

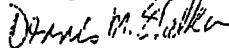
Upon introduction, we anticipate a great demand for these products. We are therefore offering our valued customers with existing contracts, the opportunity to ensure that your orders get first priority. By signing this letter of understanding, the products will be added to your contract and you will get early sign-up pricing. You will also get our commitment to meet or beat any written competitive offer or we will remove the product from your contract.

The pricing will be as follows:

| List Number | NDC Number    | Product Description           | Invoice Each Price |
|-------------|---------------|-------------------------------|--------------------|
| 04427-01-01 | 00074-4427-01 | Acyclovir 500 mg Vial         | \$35.00 / vial     |
| 04452-01-01 | 00074-4452-01 | Acyclovir 1 gram Vial         | \$70.00 / vial     |
| HO125-04-04 | 10515-125-04  | Cefuroxime 15 mg / mL 100 mL  | \$6.65 / vial      |
| HO125-03-03 | 10515-125-03  | Cefuroxime 7.5 mg / mL 100 mL | \$3.45 / vial      |
| HO125-01-01 | 10515-125-01  | Cefuroxime 75 mg / mL 10 mL   | \$3.20 / vial      |
| HO124-05-05 | 10515-124-05  | Cefuroxime 75 mg / mL 100 mL  | \$31.20 / vial     |
| HO125-02-02 | 10515-125-02  | Cefuroxime 75 mg / mL 20 mL   | \$6.40 / vial      |

To accept the above terms, please sign below and return to my attention. Thank you in advance for your consideration.

Best regards,



Dennis M. Walker  
Manager, National Accounts

Accepted By:

Title: VC AM

Date:

2/24/97

200 Abbott Park Road • Abbott Park, IL 60064-3537

EXHIBIT

1

## Facsimile Cover Sheet

**To: Zack**

**Company: Venacare Pharmacy**

**Phone: (305) 292-1635**

**Fax: (305) 292-1739**

**From: Dennis M. Walker**

**Company: Abbott Alternate Site Product Sales**

**Phone: (847) 938-1413**

**Fax: (847) 938-1084**

**Date: 5/30/97**

**Pages including this  
cover page: 1**

**Comments:** Listed below is your Automated Health Technologies price for Acyclovir and the A.W.P. information you requested. Please call if you have any questions.

| <u>List #</u> | <u>Product Description</u> | <u>Price Each</u> | <u>A.W.P. Each</u> |
|---------------|----------------------------|-------------------|--------------------|
| 4427-01       | Acyclovir 500 mg           | \$30.00           | \$ 95.00           |
| 4452-01       | Acyclovir 1 gm             | \$60.00           | \$190.00           |

